HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.4272 of 2005

Date : 13-11-2006

Between:

R.Kothapalle Grampanchayat
represented by Sarpanch
and another .. Petitioner

and

Government of Andhra Pradesh,
represented by its Principal Secretary
Panchayat Raj & Rural Development
(Pts.IV) Department, Secretariat,
Hyderabad
and others .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.4272 of 2005

**ORDER:**

**1.** Heard the Counsel.

**2.** *Rule nisi* was issued on 4-3-2005 and in W.P.M.P.No.5697/2005, this Court made the following order:

> "…. Pending further orders there shall be interim suspension as prayed for".

Respondents 1 and 2 filed W.V.M.P.No.767/2005 to vacate the said interim order.

**3.** The impugned order reads as hereunder :

> GOVERNMENT OF ANDHRA PRADESH
> PANCHAYAT RAJ & RURAL DEVELOPMENT (PTS.IV) DEPT
> Memo No.9941/Pts.IV/A1/2003-5 Dated : 5-2-2005
> Sub: Revision of petition filed by Sri K.Muneeswara Reddy, Sarpanch, R.Kothapalle Gram Panchayat against the Notification of the District Collector vide Proc.No.426/Pts.A1/97, dt.25-2-2003 – Hearing held – Dismissed – Regarding.
> Ref:- 1) Revision petition filed by Sri K.Muneeswara Reddy, Sarpanch, Kothapalle, Kurnool District, dt.26-3-2003.
> 2) Govt.Memo No.9941/Pts.IV/A.1/2003-01, dt. 20-6-2003
> 3) Govt. Telegram No.9941/Pts.IV/A1/2003-04, dt.14-10-2004
> 4) From the District Panchayat Officer, Kurnool Lr.No.426/Pts.A1/104, dt.14-9-2004.
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> In the reference 1st cited, the Sarpanch of R.Kothapalle has filed Revision Petition before the Government praying to suspend the operation of the Notification issued by the District Collector,

Kurnool vide Proc.No.426/Pts.A1/1997, dt.25-2-2003 regarding allotment of certain survey numbers to the jurisdiction of Bukkapuram Gram Panchayat of Bethamcherla Mandal, deleting the same from the jurisdiction of R.Kothapalle Gram Panchayat.

2) In the reference 2nd cited, were issued keeping in abeyance the Notification issued by the District Collector, Kurnool vide Proc.No.426/Pts.A1/1997, dt.25-2-2003 pending disposal of the revision petition and calling for the records and report of the District Collector, Kurnool on the Revision Petition.

3) Hearing of the case was held on 7-12-2004. The D.P.O. Kurnool, Sarpanchas of R.Kothapalle and Bukkapuram Gram Panchayats attended the hearing. The contentions of both the parties were heard.

4) Government, after careful examination of the matter with reference to the report by the District Panchayat Officer, Kurnool and taking into consideration the facts that emerged during the course of the hearing, have decided to vacate the stay granted in the reference 2nd cited. Accordingly, Government hereby vacate the stay granted in the reference 2nd cited.

5) The District Collector, Kurnool/DPO, Kurnool shall take further action accordingly.

**4.** Several factual details had been narrated in the affidavit filed in support of the Writ Petition. It is stated that originally Bukkapuram was the hamlet of R.Kothapalle Revenue Village. In order to separate Bukkapuram Hamlet village which was part of R.Kothapalle Revenue Village and Gram Panchayat and to form new village by name Bukkapuram Gram Panchayat the 2nd respondent had issued notification in ROC.No.1991/Pts.A.1/94-1, dt.25-12-1994 separating the local area of Bukkapuram hamlet village from the jurisdiction of existing R.Kothapalle Gram Panchayat by excluding some survey numbers from the R.Kothapalle Gram Panchayat. The said power was exercised by the respondent No.2 under Section 3(2) of A.P. Gram Panchayat Act 1994. Before issuing the said notification the 2nd respondent called for objections from the residents of Gram Panchayats by issuing show cause

notice as contemplated under A.P. Panchayat Raj (Declaration of Villages) Rules 1994. After considering the resolution passed by the petitioner Gram Panchayat and also objections raised by the 3rd respondent, the aforesaid notification was issued. While issuing the said notification the list of the survey numbers are enclosed under Schedule-I of the notification towards local area as excluded from the R.Kothapalle Gram Panchayat and included in the newly formed Bukkapuram Gram Panchayat. It is also stated that the said notification was not questioned by any aggrieved party and therefore the same has become final. While so the petitioner Gram Panchayat received a show cause notice dt.19-6-1997 wherein it was stated that some of the villagers of Bukkapuram had represented to revise the boundaries of the Gram Panchayats and therefore the Mandal Revenue Officer, Bethamcherla had conducted inquiry and separated revised survey numbers and the list of newly proposed survey numbers to be included under the jurisdiction of Bukkapuram Gram Panchayat. On receipt of the said show cause notice the petitioner Gram Panchayat called for a meeting and passed unanimous resolution raising various objections for excluding the survey numbers mentioned in the show cause notice from the jurisdiction of R.Kothapalle Gram Panchayat and including the same in Bukkapuram Gram Panchayat. It is also further stated that after receiving the unanimous resolution passed by the petitioner Gram Panchayat, the 2nd respondent appears to have dropped the proposed action of excluding the survey numbers from R.Kothapalle Gram Panchayat and the result was no notification was issued to that effect thereafter till the year 2003. However to the utter surprise of the petitioner Gram Panchayat a copy of the notification issued by the 2nd respondent vice Proc.ROC.No.426/Pts.A1/97, dt.25-2-2003 was received by the petitioner Gram Panchayat wherein various survey numbers mentioned in the show cause notice issued in the year 1997 were included in the jurisdiction of

Bukkapuram Gram Panchayat. Questioning the legality and validity of the said notification the petitioner Gram Panchayat filed Revision Petition before the 1st respondent on various grounds. The 1st respondent vide Memo No.9941/Pts.IV/A.1/2003-1, dt.20-6-2003 was pleased to pass an order by keeping the notification issued by the 2nd respondent in abeyance pending final decision in the Revision Petition. It is also further stated that in pursuance of the notice of hearing issued by the respondent, the petitioner Gram Panchayat attended for hearing along with the Counsel on 7-12-2004. The 1st respondent heard the arguments of the petitioner Gram Panchayat's Counsel at length and reserved the pronouncement of orders. Thereafter to the utter surprise of the petitioner Gram Panchayat the 1st respondent issued Memo No.9941/Pts.IV/A.1/2003-05 dt.5-2-2005 vacating the stay granted by the 1st respondent on 20-6-2003 and the said order passed by the 1st respondent is wholly illegal and contrary to the provisions of A.P. Panchayat Raj Act 1994.

**5.** The 2nd respondent filed a counter affidavit. It is stated that on certain representations from the villagers the 2nd respondent had issued notification in Roc.No.1991/Pts.A1/94-1 dt.25-12-1994 under Section 3(2) of A.P. Panchayat Raj Act 1994 bifurcating as R.Kothapalli and Bukkapuram Gram Panchayats. Before issuing notification the 2nd respondent had called for objections from the residents of the Gram Panchayat by way of show cause notice. After receiving the objections from the petitioner Gram Panchayat and the 3rd respondent, the aforesaid notification was issued and in the Schedule-I of Notification issued a list of survey numbers had been mentioned which were excluded from R.Kothapalli and included in Bukkapuram which is newly formed Gram Panchayat. It is also further stated that upon representations made by the villagers of Bukkapuram panchayat, the Mandal Revenue Officer,

Bethamcherla had conducted an enquiry and submitted revised survey numbers and the list of newly proposed survey numbers to be included in Bukkapuram village had been sent basing on which a show cause notice had been issued to the petitioner panchayat on 19-6-1997. It is also further stated that the alleged unanimous resolution passed by the petitioner Gram Panchayat had not been communicated to the 2nd respondent and the 2nd respondent issued proceedings in Roc.No.426/Pts/A-1/97, dated 25-2-2003 including certain survey numbers which were mentioned in show cause notice dated 19-6-1995 in Bukkapuram Gram Panchayat. It is further stated that a revision was filed before the 1st respondent challenging the proceedings dt.25-2-2003. The 1st respondent issued Memo No.9941/Pts-IV/A-1/2003-1, dated 20-6-2003 by keeping proceedings dated 25-2-2003 in abeyance pending final disposal of Revision Petition. The Revision Petition was heard at length by the 1st respondent wherein both Panchayats had participated on 7-12-2004 and orders had been passed by the 1st respondent through Memo No.9941/Pts/IV/A-1/2003-05 dt.5-2-2005 vacating the stay granted earlier and confirmed the orders of the Collector. Further it is stated that the notification dated 25-2-2003 had been issued by the 2nd respondent after hearing all objections raised by the petitioner and respondent No.3 villages after following the due process of law as contemplated under Section 3(2) of A.P. Panchayat Raj Act 1994 and the show cause notices had been issued before passing final orders of denotification. It is further stated that the contention of the petitioner that the 1st respondent has no power or jurisdiction to vacate the stay granted under Section 264(2) of A.P. Panchayat Raj Act and the respondents had not followed the mandatory procedure contemplated under the Act and the respondents failed to see that the Revision Petition was filed for setting aside the notification dated

25-11-1994 had been denied. As per Section 264(1) the Government may either *suo motu* or on an application from any person interested call for and examine the record of a Gram Panchayat in respect of any proceeding to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or orders passed therein and if in any case it appears to the Government that any such decision or order should be modified, annulled or reversed or remitted for consideration, they may pass orders accordingly. It is further stated that the contention of the petitioner that the 2nd respondent has no power to amend and alter the notification and has no authority or power to issue the notification dated 25-2-2003 in spite of unanimous resolution passed by the petitioner Gram Panchayat is not correct. It is further stated that the 1st respondent had given opportunity to the petitioner and called for personal hearing on the issue of reallotment of survey numbers on 7-12-2004 and passed orders by vacating the stay granted earlier for implementation of notification Roc.No.426/Pts.A1/1997 dated 25-2-2003 and hence specific stand had been taken that the respondent had not followed the mandatory procedure contemplated under the Act and the rules while passing the impugned order. The contention of the petitioner that the 1st respondent failed to see the notification dated 25-2-2003 is contrary to Rule 8 of the Act and notification was issued without proper enquiry and behind the back of the petitioner Gram Panchayat is not correct. It is stated that it is a fact that the notification dated 25-11-1994 was not questioned by any aggrieved party by filing Revision Petition before the Government, but the villagers of R.Bukkapuram Gram Panchayat had boycotted the “Prajalavaddaku palana”, “Janmabhoomi” and all other Government programmes resulting in causing inconvenience to the authorities to take up any developmental activities in the village. Hence the Mandal Revenue Officer, Bethamcherla had submitted a proposal for settlement of boundary disputes taking into view

the aforesaid facts. The allegations that the notification is politically motivated and mala fide are denied. The other specific allegations made in the affidavit filed in support of the Writ Petition also had been denied.

**6.** On a careful scrutiny of what had been averred in the counter affidavit it is clear that virtually the merits and demerits to be decided in the main Revision Petition had been raised. In stead of passing an order of this nature vacating the stay the 1st respondent should have disposed of the main Revision Petition itself. In the light of the facts and circumstances and the respective stands taken by the authorities, this Court is of the considered opinion that the impugned order to be set aside and the 1st respondent to dispose of the Revision Petition itself at an early date, preferably within a period of four weeks from the date of receipt of this order.

**7.** Accordingly the Writ Petition is allowed to the extent indicated above. No costs.

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Justice P.S.Narayana

Date : 13-11-2006

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